

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

February 17, 2021

1:33 p.m.

MEMBERS PRESENT

Senator Lora Reinbold, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

PRESENTATION: HISTORY OF PANDEMICS BY DAVID BARTON~ HISTORIAN

- POSTPONED

SENATE BILL NO. 14

"An Act relating to the selection and retention of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; relating to the duties of the Commission on Judicial Conduct; and relating to retention or rejection of a judicial officer."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

No previous action to record

BILL: SB 14

SHORT TITLE: SELECTION AND REVIEW OF JUDGES

SPONSOR(S): SENATOR(S) SHOWER

01/22/21	(S)	PREFILE RELEASED 1/8/21
01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	JUD
02/03/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/03/21	(S)	Heard & Held

02/03/21	(S)	MINUTE (JUD)
02/05/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/05/21	(S)	Scheduled but Not Heard
02/10/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/10/21	(S)	Heard & Held
02/10/21	(S)	MINUTE (JUD)
02/12/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/12/21	(S)	Heard & Held
02/12/21	(S)	MINUTE (JUD)
02/15/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/15/21	(S)	Heard & Held
02/15/21	(S)	MINUTE (JUD)
02/17/21	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

SANDON FISHER, Attorney
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of SB 14.

NANCY MEADE, General Counsel
Administrative Offices
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of SB 14.

BUDDY WHITT, Staff
Senator Shelley Hughes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained amendments to SB 14 on behalf of Senator Hughes.

MARLA GREENSTEIN, Executive Director
Alaska Commission on Judicial Conduct
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions on amendments to SB 14.

JOHN HOWARD, Attorney
JW Howard Law Office
San Diego, California

POSITION STATEMENT: Testified on the political nature of judicial appointments during the discussion of SB 14.

ACTION NARRATIVE

[1:33:52 PM](#)

CHAIR LORA REINBOLD called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Shower, Kiehl, Myers, Hughes, and Chair Reinbold.

SB 14-SELECTION AND REVIEW OF JUDGES

[1:35:32 PM](#)

CHAIR REINBOLD announced consideration of SENATE BILL NO. 14, "An Act relating to the selection and retention of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; relating to the duties of the Commission on Judicial Conduct; and relating to retention or rejection of a judicial officer."

[1:36:06 PM](#)

SENATOR MYERS moved Amendment 1, [work order 32-LS0171\A.5], which read as follows [original punctuation included]:

32-LS0171\A.5
Fisher
2/15/21

AMENDMENT 1

OFFERED IN THE SENATE

BY SENATOR MYERS

Page 6, lines 2 - 3:

Delete "strict constitutional interpretation of statutes and regulations and"

Page 7, lines 16 - 17:

Delete "strict constitutional interpretation of statutes and regulations and"

CHAIR REINBOLD objected for discussion purposes.

1:36:08 PM

SENATOR MYERS explained Amendment 1. He said "strict constitutional interpretation" represents his beliefs, but the term is more of a philosophical or academic term and less a legal one. He said it would not be appropriate to place nebulous language into statute. Whether a person being nominated as a judge believed in strict constitutional interpretation would be up to the governor making the appointment or members of the legislature to determine. Further, if a governor or a majority of legislators did not personally believe in "strict constitutional interpretation," it would become a moot point.

1:38:01 PM

SENATOR SHOWER expressed his willingness to improve the bill and consider proposed amendments. He preferred to retain the "strict constitutional interpretation" language as a "litmus test," and a means to provide legislative intent since that is what judges are charged to consider. However, the court system advised that judges are specialized and trained to be impartial. Although he questioned how anyone could be completely unbiased, he understood the concern. Therefore, he offered to support Amendment 1.

1:39:57 PM

SENATOR KIEHL said he shares Senator Myer's concern about the underlying premise. Amendment 1 would lead to an odd result because it would only allow the Judicial Council to forward an applicant's name to the governor for judicial consideration if the person committed to adhering to legislative intent. This could eliminate many good jurists and would have eliminated US Supreme Court Justices Scalia and Thomas, who consider the US Constitution in their deliberations. While he disagrees with many of their conclusions, he said they did not consider legislative intent.

1:41:13 PM

SENATOR SHOWER agreed with Senator Kiehl. He suggested the committee may wish to discuss this further with the Legislative Legal attorney who drafted SB 14.

1:42:10 PM

SANDON FISHER, Attorney, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, explained that Amendment 1 would change the bill so the Judicial Council could only submit the names of people it determines would adhere to legislative intent. Currently, in Alaska, courts use the sliding scale approach, so the clearer the bill's language, the less likely a

court will look at legislative intent. When courts cannot determine what the legislature intended in the plain language of the bill, the court will seek to find legislative intent. The stronger the legislative intent and will of the legislature, the more likely a court will consider it, he said. He opined that this amendment could be construed as something that would encourage judicial officers to try to find legislative intent even when the language in the statute is clear on its face.

[1:43:33 PM](#)

SENATOR MYERS acknowledged that he had considered that the legislative intent language would remain, which seemed appropriate since the courts already consider legislative intent. Ultimately, the judicial system should allow the legislature latitude to act unless it directly conflicts with the US Constitution or the Alaska Constitution. He maintained his view that it is still appropriate to leave it in the bill since the courts should seriously consider legislative intent.

[1:44:37 PM](#)

CHAIR REINBOLD solicited a response from the court system.

[1:44:59 PM](#)

SENATOR SHOWER asked for clarification on how this might affect the courts.

[1:45:27 PM](#)

NANCY MEADE, General Counsel, Administrative Offices, Alaska Court System, Anchorage, Alaska, after clarifying the question, replied that she agreed with the Legislative Legal attorney that the clearer the statutory language, the less likely legislative intent has any impact or how the statute should apply. Amendment 1 is problematic because an applicant would need to adhere to "strict constitutional interpretation of statutes and regulations" without necessarily understanding the legislative intent. Further, the language is somewhat confusing since the intent could vary depending on the legislator; it could refer to legislative intent in a bill or the debate held. Legislative intent should be embodied in the words of the statute, so questions do not arise as to the legislature's intent.

[1:48:13 PM](#)

SENATOR HUGHES asked for suggested language changes for Amendment 1. She related her understanding that judges sometimes look at legislative intent for guidance. She said that the legislature wants judicial candidates to agree when the statutory language is ambiguous or unclear.

MS. MEADE said she understood the goal of the phrase "strict constitutional interpretation of statutes and regulations." As Legislative Legal indicated, judges look at legislative intent when necessary, but not always. For example, it is clear if the statute sets criminal penalties for a crime at 5-8 years. However, if someone said during the debate that if the offender is a "good guy," the penalty should be reduced to two years, the judge would not be persuaded to consider it because the statutory language was clear. She recommended that the legislature write statutes that reflect its intent. Attorneys rarely argue legislative intent because the intent is not as crucial as the statutory language. She said that legislative intent is only argued when the statutory language is open to multiple interpretations.

1:50:49 PM

SENATOR MYERS agreed that the point was to put legislative intent into the statute, but the committee would like to address instances in which the statute is unclear. He maintained his desire that the court must consider actions the legislature takes as important.

1:51:54 PM

CHAIR REINBOLD asked if judges take an Oath of Office to uphold the US Constitution and Alaska Constitution.

MS. MEADE answered yes.

CHAIR REINBOLD asked if the Constitution was considered the supreme law.

MS. MEADE answered that is correct.

CHAIR REINBOLD suggested the committee consider removing "strict" from the language in Amendment 1. She maintained her view that judges already must [consider the constitutional interpretation of statutes and regulations].

1:52:53 PM

MS. MEADE agreed that judges apply the statutes as written. She explained that this language is problematic, with or without "strict" because it is unclear what it means. She said, "They agree to adhere to statutes. They agree to adhere to the Constitution." She suggested that perhaps members were trying to say that judges must agree to interpret the statutes in a way that comports with the Constitution and not find them

unconstitutional. She was uncertain if that was the goal. She argued that the courts give statutes a presumption of constitutionality. Thus, she said a high burden must be overcome to call a statute unconstitutional. Indeed, judges already commit to following the Constitution and statutes. However, adhering to legislative intent is sometimes different.

[1:54:21 PM](#)

SENATOR HUGHES emphasized that the goal is to have new entrants into the system adhere to legislative intent. She asked if it might be better to introduce a bill requiring judges to adhere to legislative intent when the statutory language was unclear.

SENATOR MYERS said it made sense to keep this language in the bill. He surmised that perhaps within 10 years, most judges will have gone through this process. He agreed that a separate bill could address sitting judges.

[1:56:04 PM](#)

SENATOR SHOWER said if the goal of SB 14 is to indicate what prospective judges should do, it might be good to emphasize what the legislature wants them to do. Judges should consider the Constitution and legislative intent when necessary. He suggested that deleting "strict" might provide an acceptable solution.

[1:57:34 PM](#)

CHAIR REINBOLD recapped her understanding of the discussion. She referred to page 6, [line 1] of SB 14, and read, "... the judicial council determines that the judicial candidate understands and is committed to a strict constitutional interpretation of statutes and regulations and adhering to legislative intent." She stated that Amendment 1 would remove the language "strict constitutional interpretation of statutes and regulations". She said that she and Senator Shower suggested removing "strict" as one possible solution. She asked if that is the sponsor's intent.

SENATOR SHOWER answered yes. He said he supported removing "strict."

[1:58:37 PM](#)

SENATOR KIEHL related that Ms. Meade described the judiciary's process. He asked if the judicial construction rules were codified.

MS. MEADE answered that judicial rules are not in state statutes. However, there is long-standing precedent and

treatises on the statutory interpretation standards used by judges and attorneys throughout the country. Alaska has its own set of case law that establishes how to interpret and apply statutes. Alaska judges will resort to legislative intent when they need help interpreting the statute since judges recognize that the legislative branch should set policy. As the bill drafter stated, the clearer the statute, the less likely anyone would need to research legislative intent.

[2:00:04 PM](#)

SENATOR KIEHL remarked that what she describes and the discussion appears to mesh well. He related his understanding that judges already consider the statutes. He asked how Amendment 1 would change what judges are supposed to do.

MS. MEADE answered that if the statute states that judges should resort to legislative intent when the statute was unclear, it will not change the current practice judges undergo.

SENATOR KIEHL pointed out that "unclear" does not appear in the bill.

[2:01:14 PM](#)

CHAIR REINBOLD maintained her support to delete "strict" from Amendment 1, which the sponsor also supports. She stated that judges take an oath to uphold the Constitution, and constitutional interpretation is an important aspect of judicial duties.

SENATOR SHOWER said that the debate is moving more towards judicial duties of sitting judges, but the bill relates to the process of selecting lawyers for judicial appointment consideration.

[2:03:00 PM](#)

At ease

[2:05:21 PM](#)

CHAIR REINBOLD reconvened the meeting. She explained that the committee was still deliberating on the direction to take with Amendment 1. She maintained her interest in the language, "constitutional interpretation of statutes and regulations." She suggested members might consider adding the language "to adhere to legislative intent to the best of their ability."

[2:06:02 PM](#)

MS. MEADE remarked that the court does not believe in having an ideological test for judicial candidates. She suggested that the committee may wish to add the phrase, "adhering to legislative intent when necessary." She said this is a policy call for the committee.

[2:06:48 PM](#)

SENATOR MYERS suggested tabling Amendment 1.

CHAIR REINBOLD rolled Amendment 1 to the bottom of the amendments.

[2:07:25 PM](#)

SENATOR HUGHES moved Amendment 2, [work order 32-LS0171\A.6], which read as follows:

32-LS0171\A.6
Fisher
2/15/21

AMENDMENT 2

OFFERED IN THE SENATE

BY SENATOR HUGHES

Page 3, line 20:

Delete "**Commission on Judicial Conduct** [JUDICIAL COUNCIL]"

Insert "judicial council"

Page 3, lines 24 - 25:

Delete "**Commission on Judicial Conduct** [JUDICIAL COUNCIL]"

Insert "judicial council"

Page 4, lines 7 - 24:

Delete all material.

Renumber the following bill sections accordingly.

Page 4, line 28:

Delete "**Commission on Judicial Conduct** [JUDICIAL COUNCIL]"

Insert "judicial council"

Page 5, lines 1 - 2:

Delete "Commission on Judicial Conduct [JUDICIAL COUNCIL]"

Insert "judicial council"

Page 6, lines 4 - 19:

Delete all material.

Renumber the following bill sections accordingly.

Page 7, line 22:

Delete "Commission on Judicial Conduct [JUDICIAL COUNCIL]"

Insert "judicial council"

Page 7, line 27:

Delete "Commission on Judicial Conduct [JUDICIAL COUNCIL]"

Insert "judicial council"

Page 9, following line 21:

Insert a new bill section to read:

"* **Sec. 20.** AS 22.30.011(h) is amended to read:

(h) If a judge or magistrate has been publicly reprimanded, suspended, or publicly censured under this section and the judge or magistrate has filed a declaration of candidacy for retention in office, the commission shall report to the judicial council for inclusion in the statement filed by the judicial council under AS 15.58.050 each public reprimand, suspension, or public censure received by the judge or magistrate

(1) since appointment; or

(2) if the judge or magistrate has been retained by election, since the last retention election of the judge or magistrate."

Renumber the following bill section accordingly.

Page 11, lines 3 - 4:

Delete "Commission on Judicial Conduct"

Insert "judicial council"

Page 11, line 6:

Delete "AS 22.15.170(c), 22.15.170(d); and AS 22.30.011(h)"

Insert "AS 22.15.170(c) and 22.15.170(d)"

CHAIR REINBOLD objected for discussion purposes.

CHAIR HUGHES explained that Amendment 2 would ask the Commission on Judicial Conduct to evaluate prospective judicial candidates since the commission already evaluates sitting judges. It would revert to the current Judicial Council process for selecting judicial nominees. She referred to proposed Amendment 3 [not yet offered], which would require the Commission on Judicial Conduct to provide an ethics evaluation and report of applicants.

[2:08:53 PM](#)

BUDDY WHITT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, Alaska, on behalf of Senator Hughes, explained that Amendment 2 would put the Judicial Council back into the bill. He detailed each change in Amendment 2, including reinstating repealed statutes to accomplish it.

CHAIR REINBOLD asked for a brief recap of the changes.

MR. WHITT explained that Amendment 2 would shift the Commission on Judicial Conduct responsibilities back to the Judicial Council.

[2:11:21 PM](#)

MS. MEADE said that the court system does not have any issue shifting the reviews [of prospective judicial candidates] back to the Judicial Council. She maintained the ACS's objects to including magistrates in the bill.

[2:11:44 PM](#)

SENATOR SHOWER, as sponsor of SB 14, maintained his commitment to seek solutions to improve the bill. He anticipated that Amendment 2 would provide a better path forward and reduce the fiscal impact. He said he had no objection to Amendment 2.

[2:13:15 PM](#)

CHAIR REINBOLD anticipated that the fiscal notes would be reduced and revised before the committee would review them.

CHAIR REINBOLD removed her objection. [There being no further objection, Amendment 2 was adopted].

[2:13:52 PM](#)

SENATOR HUGHES moved Amendment 3, [work order 32-LS 1071\A.7], which read:

32-LS0171\A.7

AMENDMENT 3

OFFERED IN THE SENATE

BY SENATOR HUGHES

Page 1, lines 1 - 2:

Delete "court of appeals and the district court"

Insert "supreme court, court of appeals, superior court, and district court,"

Page 1, line 3, following "council;":

Insert "and"

Page 1, lines 3 - 4:

Delete "; and relating to retention or rejection of a judicial officer"

Page 4, following line 10:

Insert a new bill section to read:

"* **Sec. 10.** AS 22.05.080(b) is amended to read:

(b) The office of a supreme court justice, including the office of chief justice, becomes vacant 90 days after the election at which the justice is rejected by a majority of those voting on the question or for which the justice fails to file a declaration of candidacy. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the election following failure of a justice to file a declaration of candidacy, the judicial council shall, within 30 days, submit to the Commission on Judicial Conduct the names of applicants whom the judicial council will consider for nomination so that the Commission on Judicial Conduct may complete its review under AS 22.30.011(i) and, [MEET] within 90 days, meet and submit to the governor the names of two or more persons qualified for the judicial office for whom the Commission on Judicial Conduct has completed its review under AS 23.30.011(i); [EXCEPT THAT] this 90-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the council may, at any time

within the 90-day period immediately preceding the effective date of the vacancy, submit to the Commission on Judicial Conduct the names of applicants whom the judicial council will consider for nomination so that the Commission on Judicial Conduct may complete its review under AS 22.30.011(i), meet, [AT ANY TIME WITHIN THE 90-DAY PERIOD IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF THE VACANCY] and submit to the governor the names of two or more persons qualified for the judicial office for whom the Commission on Judicial Conduct has completed its review under AS 23.30.011(i)."

Renumber the following bill sections accordingly.

Page 5, line 24:

Delete "meet within 90 days"

Insert ", within 30 days, submit to the Commission on Judicial Conduct the names of applicants whom the judicial council will consider for nomination so that the Commission on Judicial Conduct may complete its review under AS 22.30.011(i) and, [MEET] within 90 days, meet"

Page 5, line 25, following "office":

Insert "for whom the Commission on Judicial Conduct has completed its review under AS 22.30.011(i)"

Page 5, line 28:

Delete "meet"

Insert ", [MEET]"

Page 5, line 29, following "vacancy":

Insert ", submit to the Commission on Judicial Conduct the names of applicants the judicial council will consider for nomination so that the Commission on Judicial Conduct may complete its review under AS 22.30.011(i), meet,"

Page 5, line 30, following "office":

Insert "for whom the Commission on Judicial Conduct has completed its review under AS 23.30.011(i)."

Page 6, line 3:

Delete "."

Insert "."

Page 6, following line 3:

Insert a new bill section to read:

"* Sec. 14. AS 22.10.100(b) is amended to read:

(b) The office of a superior court judge becomes vacant 90 days after the election at which the judge is rejected by a majority of those voting on the question or for which the judge fails to file a declaration of candidacy. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the election following failure of a judge to file a declaration of candidacy, the judicial council shall, within 30 days, submit to the Commission on Judicial Conduct the names of applicants whom the judicial council will consider for nomination so that the Commission on Judicial Conduct may complete its review under AS 22.30.011(i) and, [MEET] within 90 days, meet and submit to the governor the names of two or more persons qualified for the judicial office for whom the Commission on Judicial Conduct has completed its review under AS 23.30.011(i); [EXCEPT THAT] this 90-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the council may, [MEET] at any time within the 90-day period immediately preceding the effective date of the vacancy, submit to the Commission on Judicial Conduct the names of applicants the judicial council will consider for nomination so that the Commission on Judicial Conduct may complete its review under AS 22.30.011(i), meet, and submit to the governor the names of two or more persons qualified for the judicial office for whom the Commission on Judicial Conduct has completed its review under AS 23.30.011(i)."

Renumber the following bill sections accordingly.

Page 7, line 6:

Delete "meet"

Insert " , within 30 days, submit to the Commission on Judicial Conduct the names of applicants whom the judicial council will consider for nomination so that the Commission on Judicial Conduct may complete its review under AS 22.30.011(i) and, [MEET] "

Page 7, line 7, following "days":

Insert ", meet"

Page 7, line 8:

Delete "; except that"

Insert "for whom the Commission on Judicial Conduct has completed its review under AS 22.30.011(i); [EXCEPT THAT]"

Page 7, line 11:

Delete "meet"

Insert ", [MEET]"

Page 7, line 12, following "vacancy":

Insert ", submit to the Commission on Judicial Conduct the names of applicants whom the judicial council will consider for nomination so that the Commission on Judicial Conduct may complete its review under AS 22.30.011(i), meet, and"

Page 7, line 13, following "position":

Insert "for whom the Commission on Judicial Conduct has completed its review under AS 23.30.011(i)"

Page 9, following line 21:

Insert a new section to read:

"* **Sec. 25.** AS 22.30.011 is amended by adding a new subsection to read:

(i) The commission shall conduct an ethics review of each applicant for judicial office or magistrate's office submitted to the commission by the judicial council under AS 22.05.080, AS 22.07.070, AS 22.10.100, and AS 22.15.170 and, within 30 days after receiving the names of applicants, submit the results of the commission's review under this subsection to the judicial council."

Renumber the following bill sections accordingly.

[2:14:05 PM](#)

SENATOR HUGHES explained that Amendment 3 would provide more information during the selection process for judges. The commission would complete an ethics review of candidates. The commission's executive director did not believe adding the ethics review of applicants would be problematic.

2:15:13 PM

CHAIR REINBOLD objected for discussion purposes.

SENATOR HUGHES explained that the Commission on Judicial Conduct would conduct an ethics evaluation of judicial applicants and report it to the Judicial Council for use in the selection process.

2:15:17 PM

MR. WHITT reviewed the specific details for Amendment 3, which requires the Commission on Judicial Conduct to conduct an ethics evaluation for attorney applicants seeking to serve on the Alaska Supreme Court, the Court of Appeals, Superior Court, District Court, and as magistrates. He pointed out that Legislative Legal brought to the sponsor's attention that Article 4, Section 8 of the Alaska Constitution mentions that the Judicial Council would act according to rules that it adopts. The Judicial Council shall perform other duties as assigned by law. The sponsor of Amendment 3 asserts that the legislature can assign any additional duties for ethics evaluations.

2:18:02 PM

SENATOR SHOWER said that he supports the changes incorporated in Amendment 3.

2:18:24 PM

SENATOR KIEHL asked what the ethics review would entail.

SENATOR HUGHES answered that the ethics review would research the attorney's record and forward any comments to the Judicial Council.

2:19:24 PM

SENATOR KIEHL said he examined applicant packets and reports prepared by the Judicial Council. He characterized the council's review as an extensive review of an applicant's background. He asked what Amendment 3 was trying to add that is lacking in the current review process.

2:19:57 PM

SENATOR HUGHES highlighted that the Commission on Judicial Conduct has expertise in ethics to drill down.

2:20:35 PM

MARLA GREENSTEIN, Executive Director, Alaska Commission on Judicial Conduct, Alaska Court System, Anchorage, Alaska, related that, broadly speaking, the commission could probably take on the reviews. She explained that lawyers are governed by different ethical rules than judges. She envisioned that the commission would take on a review of the attorney's disciplinary history using information provided by the Alaska Bar Association (ABA) so it could be a quick process. She suggested that Suzanne DiPietro, as director of the council, could probably better explain what that process would entail.

2:21:49 PM

CHAIR REINBOLD remarked that the courts assert that judicial decisions are not political. She said that sets an extremely high standard that courts are unlikely to achieve. She asked if this review would include campaign or political activity to quash political activism.

2:22:35 PM

SENATOR HUGHES highlighted that she considered it more of a review to ensure attorneys adhered to their code of ethics. She was unsure if political activities were part of it.

CHAIR REINBOLD asked if that was the sponsor's intention in Amendment 3.

SENATOR HUGHES provided an example, such that individual committee members adhere to a standard of ethics even though their politics differ. She said Amendment 3 does not measure that. Instead, the Commission on Judicial Conduct review would relate to ethics and integrity, she said.

CHAIR REINBOLD argued that if someone is actively involved in politics, their deep political activism will fall under ethics.

SENATOR HUGHES pointed out that a practicing attorney can currently participate in partisan politics, but judges cannot. She said she did not want to limit someone from becoming a judge because the attorney has been involved in partisan activities. However, once the person is sworn in as a judge, the judge must refrain from partisan politics, she said.

2:25:02 PM

SENATOR SHOWER asked Ms. Greenstein to discuss the fiscal note.

MS. GREENSTEIN envisioned if the CJC is no longer responsible for conducting retention reviews but would instead conduct

ethical reviews for magistrates, the commission would probably need a part-time position to accomplish the reviews. She estimated the commission would need one full-time person to review judicial applicants and magistrates. She suggested that holding four currently scheduled commission meetings would suffice, but the committee would need to extend each meeting by a day to perform ethics reviews. These changes will have some fiscal impact, but it is much less than the original version, she said.

2:27:09 PM

CHAIR REINBOLD asked if the commission's ethics review would look at lobbying activities for or against resource development, union activity, and social activism.

MS. GREENSTEIN said two separate ethics codes would apply. If a lawyer acted as a lobbyist but had no ethics complaints, it would not raise any issue. However, if appointed, the CJC would also review the attorney's ability to comply with the Code of Judicial Conduct. A prominent provision in the code requires judges to be impartial and not bring in any personal beliefs. Merely being a lobbyist would not disqualify the attorney, but it would raise the issue of whether the person could set aside their strong affiliations and be impartial. She said that some people can do that very effectively and others cannot.

CHAIR REINBOLD pointed out that the person's spouse might work for an oil company or Native corporation. She said she was unsure what standard is required for a judge or magistrate to recuse themselves.

2:29:35 PM

MS. GREENSTEIN indicated it would depend on the conflict, but disqualification statutes and disqualification provisions within the Code of Judicial Conduct both would apply. When a spouse or another member of the judge's household has a financial interest in a proceeding, the judge cannot hear the case. Still, other tangential relationships would require further analysis. Further, a judge cannot hear any cases that might create an appearance of partiality, which would erode the public's confidence in the decision. This standard is very broad, but judges are very sensitive to it. She said that judges will often err on the side of caution rather than creating an appearance of partiality.

2:30:35 PM

CHAIR REINBOLD asked her to present the Judicial Code of Ethics to the committee at some future date. She maintained her view that some court decisions show judicial activism, including those related to resource development issues.

MS. GREENSTEIN agreed to do so.

2:31:32 PM

SENATOR KIEHL said he was inclined to agree to allow judicial applicants who previously participated in politics to be considered so long as the applicants can be impartial on the bench. He pointed out the title change in Amendment 3 would significantly broaden the bill and asked for clarification.

SENATOR HUGHES deferred to her staff to respond.

2:33:15 PM

SENATOR KIEHL stated that the title change would broaden the bill to include retention or rejection of a judicial officer for all levels of Alaska courts. [Page 1, lines 1-3 of] Amendment 3 would add the "supreme court, court of appeals, superior court, and district court" to the title. An alternate approach would be to amend the title to include ethical reviews for judicial applicants. He asked for clarification.

2:34:10 PM

MR. WHITT said the sponsor of Amendment 3 wanted this review to be universal and apply to any vacancy on the court. He said he did not specifically discuss the title change with the Legislative Legal attorney. He surmised it was a drafting decision.

2:35:09 PM

MR. FISHER advised members that the title must describe all of the bill topics. Amendment 3 would add ethical reviews for all courts, including the Superior Court and Supreme Court. The new title would read, "An Act relating to the selection and retention of judicial officers for the supreme court, court of appeals, superior court, district court and of magistrates; relating to the duties of the judicial council; relating to the duties of the Commission on Judicial Conduct; and relating to retention or rejection of a judicial officer." This language would ensure that the title encompasses the subjects within the bill. He offered to work with the committee if it desired a tighter title.

SENATOR HUGHES said she was open to any suggestions.

[2:36:23 PM](#)

SENATOR KIEHL suggested he could make a conceptual amendment to Amendment 3 to add a stand-alone clause relating to ethical reviews of applicants for judgeships.

SENATOR HUGHES stated she had no objection to a conceptual amendment to accomplish this.

CHAIR REINBOLD asked for the will of the committee.

[2:37:25 PM](#)

MR. WHITT suggested redrafting Amendment 3 with that wording.

MS. MEADE said that the court system is neutral on this. She pointed out some timing issues might make it difficult for the Judicial Council to implement the changes. She offered to work with sponsor of the amendment.

SENATOR SHOWER turned to the fiscal note. He said he understood that the agency would absorb the costs.

[2:39:39 PM](#)

SENATOR HUGHES related her understanding that implementing these changes would not require extra staff, but Ms. Greenstein said it would require a half-time position.

[2:40:11 PM](#)

MS. GREENSTEIN said she did not recall the issue of ethical review of judicial applicants previously arose, but she may have misunderstood the committee. She recapped the fiscal impact; adding magistrates' ethics review to its current responsibilities would likely require a half-time person but conducting ethical reviews for all judicial applicants would require a full-time person. Since the commission does not currently perform this work, it would require additional staff. The commission would extend the regular quarterly meetings from one to two-day meetings. She offered to consider this further and prepare the fiscal note.

[2:42:17 PM](#)

SENATOR HUGHES asked for the fiscal note effect if the ethical reviews were limited to judges for the lower courts but not magistrates. She asked if it would still require a part-time position.

MS. GREENSTEIN answered that she was unsure of the volume of candidates that would need review, but she offered to acquire the number of judges from Ms. DiPietro.

SENATOR HUGHES asked her to provide the information before the next meeting.

[2:43:03 PM](#)

CHAIR REINBOLD remarked that adding one additional staff person seemed excessive to perform the ethical reviews since the commission already reviews ethics. She asked the executive director to work with Senator Hughes on the fiscal note.

[2:44:25 PM](#)

SENATOR SHOWER suggested that the committee table Amendment 3.

[2:44:58 PM](#)

At ease

[2:45:13 PM](#)

CHAIR REINBOLD reconvened the meeting.

[2:45:15 PM](#)

SENATOR HUGHES withdrew Amendment 3.

[2:45:44 PM](#)

CHAIR REINBOLD introduced invited testimony.

[2:46:44 PM](#)

JOHN HOWARD, Attorney, J.W. Howard Attorneys, San Diego, California, said he was asked to discuss the political nature of judicial appointments. He outlined the process used in California, which has not experienced political issues. The governor nominates applicants and appoints a committee in each judicial district to vet the candidates and make recommendations to the governor. He said the governor conducts a second vetting process before appointing the judge.

MR. HOWARD described the California court system, which consists of 58 [Superior or] Trial Courts with one in each county, [six] District Courts of Appeal, and the [State Supreme Court]. The intermediate courts, [the Courts of Appeal], set significant precedent in California. The California Supreme Court settles important questions of law and resolves conflicts among the Courts of Appeal.

[2:50:57 PM](#)

MR. HOWARD characterized California as a partisan state. However, the local committees have zeroed in on qualification rather than ideology. He acknowledged that some sitting judges are liberal and others are conservative. He said he is not aware of any nominee appointed by the governor that the legislature has turned down. He maintained his view that the system that selects judges based on qualifications works well. He suggested that Alaska may wish to consider having judicial candidates selected and approved by political bodies.

2:54:33 PM

SENATOR SHOWER told Mr. Howard that he introduced SB 14 to allow the governor to select nominees submitted by the Judicial Council or to appoint judicial nominees, subject to confirmation by the legislature. He said that there was some concern that this would politicize the process. He related his understanding that California's process to appoint judges works well but is not politicized.

MR. HOWARD agreed. He explained that the Democrats have controlled the legislature since 1959, yet then-Governor Reagan nominated a number of conservative judges. In his experience, the California legislature seems to consider qualifications for judicial nominees, but it has not been seen as a partisan or political appointment.

2:57:05 PM

SENATOR SHOWER reviewed the composition of the Judicial Council, noting that the Alaska Bar Association appoints three of the six members. The other members are public members. He asked if this raises any constitutional issues with the Judicial Council making recommendations for retention.

MR. HOWARD answered that the committees in California advise the governor. The governor can decide not to select the nominees and select someone else. He said the check on the system is that the people vote to retain judges, just as in Alaska. He expressed concern with SB 14 because it appears an official agency of the Alaska government can weigh in and oppose retention, which is problematic in terms of equal protection and due process.

2:59:52 PM

CHAIR REINBOLD asked him what he suggested as the solution.

3:00:08 PM

MR. HOWARD suggested forbidding the Judicial Council from weighing in on elections.

3:00:33 PM

SENATOR MYERS asked how often judges are removed from the bench in retention elections.

MR. HOWARD replied almost never. Judges are usually reelected if no one declares against them.

3:01:16 PM

CHAIR REINBOLD remarked that she would like to see the election pamphlet revised because only a small biography is provided for each judge who is up for retention.

[SB 14 was held in committee.]

3:02:30 PM

There being no further business to come before the committee, Chair Reinbold adjourned the Senate Judiciary Standing Committee meeting at 3:02 p.m.